

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
NGENSOLUTIONS, LLC)	Facility ID No. 60463
)	NAL/Acct. No. 202241420016
Low Power Television Station)	FRN: 0019060052
KRRI-LP, Reno, Nevada)	

**MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: July 25, 2022

Released: July 25, 2022

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it Ngensolutions, LLC (NGL), licensee of low power television (LPTV) station KRRI-LP, Reno, Nevada (KRRI-LP or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,¹ we find that the NGL apparently willfully violated section 74.788² of the Rules by failing to timely file a license to cover application, and willfully and repeatedly violated section 301 of the Act,³ by engaging in unauthorized operation. Based upon our review of the facts and circumstances before us, we conclude that the NGL is apparently liable for a monetary forfeiture in the amount of six thousand five hundred dollars (\$6,500).

II. BACKGROUND

2. KRRI-LP is an LPTV station that operate in analog on channel 25. In 2011, the Station applied for and was granted a digital companion channel (DCC CP) for channel 25.⁴ In 2016, the Station was granted special temporary authority (STA) to operate in digital on channel 25 at reduced power.⁵ That STA expired in December 9, 2016, and was not renewed. In July 2021, on the eve of the July 13, 2021 LPTV digital transition, NGL discovered it had mistakenly filed for a digital companion channel CP and not a flash cut CP – and it quickly filed a flash cut application for channel 25 (Flash Cut CP) that was granted on July 6, 2021.⁶ Because the Station was operating in analog at the time, the Flash Cut CP was assigned an expiration date of July 13, 2021. Although NGL maintains that the Station began operating its digital facilities in 2016, it failed to file a timely application for license to cover prior to July 13, 2021, when the Flash Cut CP expired on its own terms pursuant to section 74.788(b) of the Rules.⁷

¹ This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Commission's rules (Rules). See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. See 47 CFR § 0.283.

² See 47 CFR § 74.788.

³ See 47 U.S.C. § 301.

⁴ See CDBS File No. BDCCDTL-20101015ACB.

⁵ See LMS File No. 0000011058.

⁶ See LMS File No. 0000151219.

⁷ 47 CFR § 74.788(b).

Furthermore, the Station's analog license was automatically cancelled at 12:00 A.M. (local time) on July 14, 2021.⁸

3. In January 2022, in response to a Video Division inquiry about the operational status of the Station, NGL submitted a Request for Reinstatement asking that the Flash Cut CP be reinstated and that it be allowed to submit a license to cover it.⁹ NGL explained its confusion about having mistakenly filed for a digital companion channel in 2011 thinking it was filing for a flash cut construction permit.¹⁰ NGL maintained that it had continuously operated the Station in digital on channel 25 at reduced power since 2016 and that it had completed the Station's full power facilities and was prepared to file a license to cover the Flash Cut CP upon reinstatement.¹¹ In response to a subsequent Video Division inquiry,¹² NGL supplemented its Request to provide documentation demonstrating that the Station had been operating since 2016 and that the Station's permanent digital facilities under the Flash Cut CP had been constructed.¹³

III. DISCUSSION

4. *Proposed Forfeiture.* NGL failed to timely file a license to cover as required by section 74.788 of the Rules,¹⁴ and has engaged in unauthorized operations for over five years. In its Request, NGL stated that it failed to timely submit a license to cover due to a mistaken belief that it had already obtained a flash cut construction permit for the Station and it was authorized to operate from that facility.¹⁵ It is well settled precedent that ignorance of a rule or law does not excuse a violation or

⁸ See 47 CFR § 74.731(m). The Commission has a long-established policy of the "single, unified station license" as part of the digital conversion process. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10755, para. 48 (2011) citing *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19390, n. 362 (2004) (stating that the Commission has always been clear that the station's two "authorizations" are part of a single, unified license) (emphasis added). Therefore, an analog LPTV/TV Translator station whose analog license is automatically cancelled and does not have a digital construction permit no longer has a valid facility.

⁹ See Ngensolutions, LLC's Request for Reinstatement at 1 (Jan. 31, 2022)(Request), a copy of which is available at the KRRI-LP main station page, LMS Facility ID No. 60463.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 1-2.

¹² See Letter to Ngensolutions, LLC from Barbara A. Kreisman, Chief, Video Division (Mar. 4, 2022), a copy of which is available at the KRRI-LP main station page, LMS Facility ID No. 60463.

¹³ See Ngensolutions, LLC's Response (Apr. 19, 2022) (Response), a copy of which is available at the KRRI-LP main station page, LMS Facility ID No. 60463.

¹⁴ See 47 CFR § 74.788.

¹⁵ Request at 1-2.

noncompliance.¹⁶ Further, with its STA expiring in December 2016, NGL also engaged in unauthorized operation for over five years in violation of section 301 of the Act.¹⁷

5. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act.¹⁸ Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁹ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²⁰ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,²¹ and the Commission has so interpreted the term in the section 503(b) context.²² Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”²³

6. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.²⁴ The guidelines also specify a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.²⁵ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator,

¹⁶ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (“[O]ne may not ‘claim ignorance of the law as a defense’” (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) (“PTT’s purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission’s] [r]ules to which it was subject.”); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) (“It is well settled that ignorance of the [Commission’s] [r]ules does not excuse a violation.”) (internal cites omitted).

¹⁷ See 47 U.S.C. § 301.

¹⁸ 47 U.S.C. § 503(b)(1)(B).

¹⁹ *Id.* See also 47 CFR § 1.80(a)(1).

²⁰ 47 U.S.C. § 312(f)(1).

²¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²² See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), recon. denied, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

²³ 47 U.S.C. § 312(f)(2).

²⁴ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. See also *Clear Channel*, 26 FCC Rcd at 7157 (“We note that the staff may also issue Notices of Apparent Liability for ‘failure to file a required form’ as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the ‘Act’) and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.”).

²⁵ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁶

7. In this case, NGL failed to file a timely license to cover and engaged in unauthorized operation of the Station for over five years. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$6,500 because, as an LPTV station, the Station is providing a secondary service.²⁷ While in other cases we have only fined other LPTV and TV translator licensees \$3,500 for similar violations,²⁸ we believe an increased amount is warranted here given the lengthy period of time (over four years) the station engaged in unauthorized operation compared to those other cases. Stations are only permitted to commence operation pursuant to a valid instrument of authorization and we find the Permittee’s failure represents extreme disregard, or at best ignorance, of Commission’s licensing processes and the Act itself. We will also treat NGL’s Request as a request for waiver of section 74.788 of the Rules,²⁹ reinstate and extend the Flash Cut CP and instruct NGL to submit an application for license to cover within ten (10) days. If properly filed we will grant the application for license cover by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude its grant.³⁰

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission’s rules,³¹ Ngensolutions, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand five

²⁶ 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

²⁷ *See e.g., Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1616 (rel. Dec. 21, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and four months unauthorized operations) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 21-1386 (rel. Nov. 5, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and six months unauthorized operations) (paid Nov. 30, 2021); *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (finding that although the station is secondary, a forfeiture in the amount of \$6,500 was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

²⁸ *See id.*

²⁹ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown). Providing relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its authorized facility prior to the construction expiration date is consistent with Commission precedent. *See e.g., Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para 11 (2011) (upholding as proper the Bureau’s practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process); *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing a petition for reconsideration of an expired construction permit as procedurally improper and treating it instead as a request for waiver). We find that based on the specific facts and circumstances presented here waiver is warranted.

³⁰ We note that also pending are the Station’s application for renewal of license (LMS File No. 0000192701) and Notice of Consummation (LMS File No. 0000166103). Those matters will be processed accordingly following the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude action.

³¹ 47 U.S.C. § 503(b); 47 CFR § 1.80.

hundred dollars (\$6,500) for its apparent willful violation of section 74.788 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.³²

9. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³³ that, within thirty (30) days of the release date of this *NAL*, Ngensolutions, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),³⁴ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that payment has been made must be sent on the day of payment to Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:³⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number

³² 47 CFR § 74.788(b); 47 U.S.C. § 301.

³³ 47 CFR § 1.80.

³⁴ Payments made using CORES do not require the submission of an FCC Form 159.

³⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

³⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

11. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.³⁷ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

12. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.³⁸ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.³⁹ A courtesy copy should also be emailed to Shaun.Maher@fcc.gov to assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.⁴⁰

14. **IT IS FURTHER ORDERED** that, the digital flash cut construction permit (LMS File No. 0000151219) of Ngensolutions, LLC for KRRI-LP, Reno, Nevada **IS REINSTATED AND EXTENDED** to (insert date 10 days from release date of NAL).

15. **IT IS FURTHER ORDERED** that, not later than (insert date 10 days from release date of NAL), Ngensolutions shall submit an application for license to cover construction of the digital construction permit (LMS File No. 0000151219) for KRRI-LP, Reno, Nevada. Failure to do so will result in permanent cancellation of the construction permit, Station's license, and call sign.

16. **IT IS FURTHER ORDERED** that copies of this NAL shall be sent by First Class and Certified Mail, Return Receipt Requested, to Ngensolutions LLC, 13495 S. Hills Drive, Reno, NV 89511

³⁷ See 47 CFR § 1.1914.

³⁸ 47 CFR §§ 1.16 and 1.80(g)(3).

³⁹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

⁴⁰ See 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

as well as e-mailed to taroil@yahoo.com, and to their counsel: Aaron Shainis, Esq., 1850 M St NW, Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau